IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9051 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

L.V. GANGAR

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioner

MR RJ OZA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 08/09/2000

ORAL JUDGEMENT

Old, disabled and retired Government servant has approached this Court by making a grievance that at every stage, the Government has withheld the benefit of pay fixation and after delayed period the amount has been paid without interest.

#. The demand made by the petitioner in the petition is that from 1.5.1960 to 10.5.1966 there was arrears of Rs.3,848-40. It is admitted position that the said amount was paid on 16.8.1988. For the period from 11.5.1966 to 31.12.1975, the difference of Rs.10,172-70 was paid on 19.6.1985. Similarly the difference of Rs.14,801-65 for the period from 1.1.1976 to 31.7.1984 was paid to the petitioner on 2.1.1986. There is no dispute about the aforesaid dates of payment. One I.N. Parmar, Assistant Director of Fisheries, Gandhinagar has filed affidavit in this matter, and in paragraph 6 of the affidavit, he has pointed out in detail as to how the amount was paid and how the delay was caused.

#. It is submitted that the file pertaining to the petitioner's service record was missing and, therefore, there was delay in taking the decision at every stage. It is not the case that the petitioner is responsible for delay in any manner whatsoever. On behalf of the respondent, it is submitted that the petitioner was a gazetted officer, he himself was drawing and disbursing for the drawal of pay and allowance. It is, however, submitted that in view of the procedural aspects, it can never be said that there was negligence or indifference on the part of the respondents. Though there is much delay in making the payment at each stage, it is unfortunate that the respondent has come out with the contention that the respondents have not delayed the payment or arrears intentionally.

#. It is a matter of fact that the amount of difference was not paid to the petitioner which he was entitled to. On the recommendation of Pay Commission being accepted by the Government, it was known as to when and what amount was payable by way of salary to the petitioner. If the petitioner would have drawn a bill for a higher amount, then possibly he would have been subjected to departmental proceedings. Therefore, unless and until orders were issued, he would not take the risk of drawing more amount than what is indicated in the service records or the order made after the acceptance of the Pay Commission Report.

#. The difference from 1.5.1960 to 10.5.1966 was paid on 16.8.1988, and that too without interest. Similarly the difference for the period from 11.5.1966 to 31.12.1975 was paid on 19.6.1985. Thus, the payments were made after a substantial delay for which the petitioner was

not responsible. If the delay and the explanation thereof would have been reasonable, the Court would have accepted the same. In the instant case, except the statement that the record was missing and tossing of papers from one office to other office, no explanation is rendered. When the petitioner is not responsible for the delay, the question is: why he should be asked to suffer any monetary loss.

#. It is required to be noted that the difference from 1.5.1960 to 10.5.1966 which he was entitled to, in view of the pay commission report, the petitioner lodged his claim for the first time on 11.9.1967. Thereafter, several reminders were forwarded. However, the amount was paid on 16.8.1988. Similarly thereafter also, correspondence which was required at the hands of the petitioner for claiming the amount and the decision is taken after the delayed period.

#. Now, the petitioner has got the amount of difference, but his grievance is that he should be paid interest on the delayed period. Considering the peculiar facts and circumstances of the case, the respondents are directed to pay interest at the rate of 12% on the amount from its due date till the actual date of payment in all the aforesaid three payments. It is further directed that the interest shall be paid within three months from today without fail, which is longer than the period suggested by learned Assistant Government Pleader. It is hoped that no further proceedings will be required to be initiated by the petitioner in the matter. Rule made absolute accordingly with cost.

csm./ (B.C. PATEL, J.)